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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,254

02/20/2004

Jack Bech Nielsen

10168.204-US

1411

25908

7590

08/11/2005

NOVOZYMES NORTH AMERICA, INC.
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NEW YORK, NY 10110

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,254

Applicant(s)

NIELSEN ET AL.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

[Handwritten signature]
1-D

Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed on 5/9/05, applicant adds new claim 24 which recites the limitation " mixing a maltogenic alpha amylase and a microbial pullulanase". This limitation is not supported by the original disclosure. The original claims and specification disclose maltogenic alpha amylase or pullulanase; there is no disclosure of a combination of maltogenic alpha amylase and pullulanase.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maselli et al.

Maselli et al disclose a process of form breakfast cereals. The process comprises the steps of mixing alpha-amylase with cereal grain fraction, cooking the cereal grain, tempering the grains, draining the grains and forming the grains into breakfast cereal shapes. The amount of water ranges from about 20-55%. The tempering period is up to about 48 hours, typically from 2-24 hours. The grains may be formed by shredding, flaking, grinding, extrusion and the like. The enzymatic treatment may begin prior to cooking. The cooking is done to gelatinize the starch. The cereal grain fraction contain from about 25-45% cereal starch. In the production of extruded products, the grains are optionally dried and extruded. Various dies may be used to extrude into cereal shaped pieces. The enzymes are inactivated by heating during

Art Unit: 1761

conventional baking, toasting and drying steps. (see col. 11 lines 19-50, col. 12 lines 26-30, col. 17 lines 14-35, col. 13 lines 11-25.)

Maselli et al disclose all the steps of the above cited claims. The cooking step is the same as the claimed heating so as to gelatinize the starch. Since the cereal grains are treated with enzyme degrading enzyme and it is subjected to a holding period within the time frame claimed, it is inherent retrogradation of the starch takes place.

Maselli et al do not disclose forming pellets, frying the pellets in oil, puffing in hot air, the use of maltogenic alpha amylase, pullulanase and combination thereof and the cooling temperature.

Maselli et al teach forming the grains into various breakfast cereal shapes. It would have been obvious to form the cereal into pellets if such shape is desired. This would have been an obvious matter of choice. Maselli et al disclose the shaped pieces may be puffed. Puffing by frying and hot air are well known in the art. It would have been obvious to one skilled in the art to use any known puffing method to puff the formed pieces. In absence of showing of criticality or unexpected result, it would have been obvious to one skilled in the art to use any known starch-degrading enzyme. Both maltogenic alpha amylase and pullulanase are well known and commercially available. Applicant does not attach any criticality to the enzyme selected; the specification discloses alpha amylase as well as maltogenic alpha amylase and pullulanase. It would also have been obvious to use a combination of enzymes depending on the type of breakage desired. It would have been within the skill of one in the art to determine the appropriate cooling temperature.

Art Unit: 1761

The change in the rejection is necessitated by amendment.

In the response filed 5/9/05, applicant argues Maselli et al do not teach the use of maltogenic alpha amylase or a microbial pullulanase. The exclusion of alpha amylase does not define over the prior art as set forth in the rejection above.

Applicant's arguments filed 5/9/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 5, 2005


LIEN TRAN
PRIMARY EXAMINER
